Petition

81-1582

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No.

In the

Supreme Court of the United States

OCTOBER TERM, 1981

WILLIAM J. QUINN,

Petitioner,

vs.

BURLINGTON NORTHERN INC. PENSION PLAN, BURLINGTON NORTHERN INC. PENSION TRUST and THE FIRST TRUST COMPANY OF SAINT PAUL, a Minnesota banking corporation, as Trustee,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that Respondent Burlington Northern Inc. Pension Plan's interpretation of its Articles must be reviewed under an "arbitrary, capricious, abuse of discretion" standard rather than a standard which construes the language of such articles against the relevant plan and in favor of plan participants in accord with ordinary principles of contractual interpretation.

2. Whether the Court of Appeals erred in its holding denying Petitioner William J. Quinn a recovery of certain pension benefits offset by Respondents under Respondent Burlington Northern Inc. Pension Plan's interpretation of Section 5.4 of its Articles.

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OPINIONS BELOW

The November 30, 1981 Opinion of the United States Court of Appeals for the Eighth Circuit rendered in this matter is reported at 664 F.2d 675 (Appendix A). The December 12, 1980 Order and Memorandum of the United States District Court for the District of Minnesota, Third Division (Appendix B), is unreported.

JURISDICTION

The Judgment of the Court of Appeals was entered on November 30, 1981, and amended on that date (Appendix C). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

Set forth in Appendix D are Sections 101(b), 203(a)(3), 502(e)(1) and 514(a), (b)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001(b), 1053(a)(3), 1132(e)(1) and 1144(a), (b)(1).

STATEMENT OF THE CASE

A.

Summary of Facts

The facts of this case are undisputed. Petitioner, William J. Quinn ("Quinn"), is currently a participant in Respondent, Burlington Northern Inc. Pension Plan ("BN Plan"), based upon his employment with the Chicago, Burlington & Quincy Railroad Company ("CB&Q") and Burlington Northern Inc. ("BN") from October 12, 1966 to March 15, 1970. From the former date to March 1, 1970, he served as the President, Chief Executive Officer and a Director of CB&Q. CB&Q and certain other railway companies merged to form BN on March 1, 1970, at which time Quinn became the Vice Chairman of BN's Board of Directors; he remained in that position until his resignation from BN on March 15, 1970.

After leaving BN, Quinn entered into an employment agreement with the Chicago, Milwaukee, St. Paul and Pacific Railway Company ("Milwaukee Road"). The agreement, which was guaranteed by The Milwaukee Land Company, a Milwaukee Road subsidiary, and the Chicago Milwaukee Corporation, the Milwaukee Road's parent, by its terms was to run from March 16, 1970 to May 7, 1981, and provided, among other things, for an annual salary during that period of not less than $150,000. It also provided that after May 7, 1981, Quinn would be paid, for the rest of his life, one-half of his annual salary

at the time of expiration, but not less than $75,000 per year. Under the agreement, Quinn had an option to receive pension benefits under the Milwaukee Road's pension plan ("Milwaukee Road Plan"). However, to exercise this option, he had to elect irrevocably in writing to receive these benefits; further, upon this election he would forfeit substantial consideration, to wit, all rights to receive the life-long "one-half of annual salary at the time of expiration, but not less than $75,000 per year" referred to above.[1] The amounts to be forfeited would have *substantially exceeded* any amounts which Quinn would have been entitled to receive from the Milwaukee Road Plan had he exercised the aforesaid option. Quinn never elected to exercise that option and never agreed to forfeit his substantial benefits under his employment agreement (because he did not wish to forfeit this substantial consideration), and, accordingly, was never legally able to receive payment from the Milwaukee Road Plan. Even if he *had* exercised the option under his employment agreement, the agreement provided that he could not receive Milwaukee Road Plan benefits until May 7, 1981 (barring death or disability), the date his employment was to terminate under the agreement.

In December, 1977, the Milwaukee Road filed for reorganization under the Bankruptcy Act. Subsequently,

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[1] The benefit to be forfeited was substantial, since: (i) at the time of Quinn's retirement his annual salary was $190,000 (which would mandate annual payments of $95,000); (ii) in any event the agreement promised *a minimum* annual salary of $150,000, so that annual payments could never be less than $75,000; and (iii) the obligation of the Milwaukee Road was guaranteed by a subsidiary and the Road's parent, so that payment was well assured whatever the financial condition of the Milwaukee Road might be.

Quinn's employment agreement was renegotiated on terms less favorable to Quinn. Among other things, the new agreement called for Quinn's retirement not later than October 1, 1978, rather than May 7, 1981, and provided for: (i) payments not to exceed $45,000 per year for his services and availability as a consultant, to be made from October 1, 1978 to no later than May 7, 1981; and (ii) payments beginning October 1, 1978 at the rate of $75,000 per year. The $75,000 annual payments were to be made from the general corporate funds of The Milwaukee Road or, alternatively, from the general corporate funds of The Milwaukee Land Company, and/or the Chicago Milwaukee Corporation.[2] No option to receive pension benefits under the Milwaukee Road Plan was given to Quinn in the renegotiated agreement. In fact, the agreement provided that Quinn's *only* source of post-retirement benefits from Milwaukee Road-related entities was to be the monies he received pursuant to the renegotiated employment agreement, thereby effectively revoking the option to elect Milwaukee Road Plan benefits Quinn had held under his 1970 employment agreement.

Since October 1, 1978, Quinn has received the $75,000 annual payments as scheduled pursuant to his renegotiated employment agreement with the Milwaukee Road; he has never received any monies from the Milwaukee Road Plan.

On or about February, 1979, Quinn provided the BN Plan with certain information to learn whether he was

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[2] The Milwaukee Land Company and the Chicago Milwaukee Corporation had obligations to make such payments as the result of their guaranties of Quinn's employment agreement and renegotiated employment agreement.

entitled to pension benefits under its Articles. On March 26, 1979, the BN Plan's representative notified Quinn by letter that he was entitled to receive monthly pension benefits in the amount of $448.42 for life under the Plan. On April 6, 1979, Quinn challenged by letter the BN Plan's calculation of his benefit, and requested the BN Plan to furnish him with information supporting its calculation.

In pursuit of his administrative remedies, on August 13, 1979, Quinn personally met with various BN Plan representatives. He was told that he was entitled to 30 years of "continuous service" (as that term is defined in Paragraph 14 of the BN Plan's Articles in effect as of March 15, 1970), commencing February 19, 1940 and continuing to March 15, 1970.[3] According to the BN Plan's representatives, based on this 30 years of total credited service, Quinn would be entitled to receive a monthly pension benefit in the amount of $3,937.32 for life. However, those representatives stated that the BN Plan would only make payment to Quinn at the rate of $448.42 per month for life, based on Quinn's 3 years and 5 months of service with CB&Q and BN, because under

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[3] This 30 years of "continuous service" included employment with several employers. From February 19, 1940 to April 1, 1954, Quinn was employed by the Soo Line Railroad (including government service during World War II). From April 1, 1954 to October 12, 1966, the date on which he commenced employment with CB&Q, Quinn was employed by the Milwaukee Road. As a precondition to commencing employment with CB&Q, Quinn had requested that all his prior railroad service be credited and included as continuous service under CB&Q's pension plan. CB&Q granted this request by a special resolution of its Board of Directors.

Section 5.4 of the BN Plan's Articles,[4] the Plan intended to offset the actuarial equivalent of the $75,000 annual payments Quinn was receiving from the Milwaukee Road pursuant to his renegotiated employment agreement, against the benefit payments due him under the BN Plan as the result of his prior railroad service from 1940 to 1966.

Quinn was forced to retain counsel to pursue his rights under the BN Plan. In correspondence between Quinn's attorney and the BN Plan's representative, the former noted that for the BN Plan to make use of Section 5.4, it had to show that the $75,000 payments Quinn has been receiving from the Milwaukee Road (the actuarial equivalent of which is being used by the BN Plan as an offset to reduce Quinn's pension benefits) could be characterized as:

(i) vested benefits which Quinn has received or has been entitled to receive;
(ii) under a pension plan;
(iii) which meets the requirements of Section 401(a) of the Internal Revenue Code (the "Code");
(iv) with respect to service with an employer other than CB&Q and BN which is included in Quinn's 30-year period of continuous service under the

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[4] In relevant part, Section 5.4 provides:
". . . the amount of monthly pension payable to a participant . . . shall be reduced by the actuarial equivalent of any vested benefit which such participant has received, or which he is entitled to receive, under any other pension plan which meets the requirements of Section 401(a) of the Internal Revenue Code with respect to service with another employer which is included in such participant's period of continuous service under that Plan . . ."

Plan (in other words, with respect to Quinn's railroad service from 1940 to 1966).

According to Quinn's attorney, this showing was impossible for the BN Plan to make because:

(i) Quinn has never received any payments from any pension plan of the Milwaukee Road, and cannot receive any such payment under the terms of his renegotiated employment agreement;

(ii) The $75,000 payments received and to be received by Quinn pursuant to his renegotiated employment agreement with the Milwaukee Road (a) are not made by or from any Milwaukee Road pension plan or pension fund, and (b) are not made by or from any Milwaukee Road pension plan which meets the requirements of Section 401(a) of the Code, since none of the entities from which Quinn has received or can receive payments are, or have ever been, pension plans, much less pension plans which meet the requirements of Section 401(a) of the Code;

(iii) The $75,000 payments received and to be received by Quinn are not due him on account of his service with railroads from 1940 to 1966, but were earned by reason of his work with the Milwaukee Road under his initial and renegotiated employment agreements with the Milwaukee Road relating to the period *subsequent* to March 15, 1970.

Further:

(i) Since October 1, 1978, the effective date of his renegotiated employment agreement with the Milwaukee Road, Quinn has had no option or ability to elect to receive benefit payments from the Milwaukee Road Plan, precluding any "en-

titlement to receive" a "vested benefit" from the Milwaukee Road Plan;

(ii) Although from June 1, 1976 to October 1, 1978 Quinn held such an option (the exercise of which, of course, would have forced him to forfeit annual payments for life in an amount of at least $75,000), because (a) that option was never exercised (because Quinn did not wish to make that detrimental forfeiture), and (b) even if it *had been* exercised, pension benefits could not have commenced until Quinn terminated employment with the Milwaukee Road, which was not to occur until May 7, 1981, again there was never any "entitlement to receive" a "vested benefit" from a Milwaukee Road pension plan.

If the BN Plan were, and is, not entitled to offset the actuarial equivalent of the payments Quinn has been receiving from the Milwaukee Road pursuant to his renegotiated employment agreement, against the benefit payments due Quinn under the BN Plan as the result of his prior railroad service from 1940 to 1966, by the BN Plan's own admission Quinn would have been, and now is, entitled to receive a monthly pension benefit for life in the amount of $3,937.32, beginning on June 1, 1976, the first day of the month following his 65th birthday (he was born on May 8, 1911). To date, the BN Plan has made payments to Quinn at the rate of $448.42 per month only, retroactive to June 1, 1976.

Despite the arguments of Quinn's counsel, on November 21, 1979, the BN Plan's representative, without extended discussion merely advised that the BN Plan's initial decision had been affirmed. Quinn's attorney thereafter secured a second legal opinion from recognized independent counsel specializing in the ERISA area and

forwarded it to the BN Plan's representative with a request that the BN Plan's decision be reconsidered. On February 19, 1980, the BN Plan's representative by letter summarily advised Quinn's attorney that no further proceedings could be instituted by administrative process under the BN Plan to modify the Plan's earlier determination. Quinn, at that point, had exhausted all relevant administrative remedies, forcing him to initiate suit.

B.

Proceedings in the Courts Below

Quinn brought suit in the United States District Court for the District of Minnesota, Third Division, on March 19, 1980, requesting that the court interpret Section 5.4 of the BN Plan's Articles and hold, as a matter of law, that he was entitled to relief. Jurisdiction of that suit, No. 3-80-211, was predicted upon Section 502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1), and 28 U.S.C. §1332(a)(1).

The parties to the suit subsequently filed Cross-Motions for Summary Judgment. By its Order and Memorandum of December 12, 1980 (Appendix B), the District Court granted in part and denied in part the cross-motions, upholding the BN Plan's offset as proper between June 1, 1976 and October 1, 1978, but declaring Quinn entitled to recover all offsets made after the latter date on the rationale that since that latter date on which his renegotiated employment agreement became effective, Quinn has neither "received" nor been "entitled to receive" Milwaukee Road Plan benefits, depriving the BN Plan of a basis for an offset under Section 5.4 of its Articles.

The BN Plan appealed the District Court's decision by filing its Notice of Appeal of January 9, 1981, invoking the jurisdiction of the Court of Appeals for the Eighth Circuit under 28 U.S.C. §1291 in No. 81-1035; Quinn subsequently filed a Notice of Appeal on January 20, 1981, initiating his cross-appeal in No. 81-1086. On November 30, 1981, the Court of Appeals issued an Opinion (Appendix A) and Judgment (Appendix C) in favor of the BN Plan on all major issues. Quinn has petitioned this Court to issue a Writ of Certiorari to permit review of the Court of Appeals' decision.

REASONS FOR GRANTING THE WRIT

I.

Quinn's Petition Should Be Granted Because It Brings before the Court the Important Question of Federal Law of the Appropriate Standard for Reviewing a Pension Plan's Interpretation of Its Own Articles.

ERISA was expressly designed "to protect . . . the interests of participants in employee benefit plans . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." ERISA §101(b), 29 U.S.C. §1001(b).

The Eighth Circuit's decision denying Quinn a recovery of pension benefits offset by Respondents was based upon its holding that a pension plan's interpretation of its own articles must be reviewed under an "arbitrary, capricious, abuse of discretion" standard, rather than a standard which construes the language of such articles against the relevant plan and in favor of plan participants in accord with ordinary principles of contractual interpretation. The use of the "arbitrary, capricious, abuse of discretion" standard under the circumstances of this case subverts the express protective policy of ERISA by: (i) depriving participants of pre-ERISA rights; (ii) unduly broadening the discretion of pension plan administrators at the expense of participants; and (iii) practically hindering participants' access to remedies in federal courts. Accordingly, Quinn's Petition should be granted to bring before the Court the important federal

question of the appropriate standard for reviewing a plan's interpretation of its own articles.

In both the District Court and the Court of Appeals, significant attention was devoted to the issue of what standard of review should govern judicial inquiry into the propriety of the BN Plan's interpretation of its own Articles. Both sides admitted that the Eighth Circuit, in cases such as *Bueneman* v. *Central States, Southeast and Southwest Areas Pension Fund,* 572 F.2d 1208 (8th Cir. 1978), had taken the position that in reviewing the *actions* of a pension plan a plaintiff participant could prevail only if the plan's actions were shown to be arbitrary or capricious, or to involve an abuse of discretion. Quinn, however, asserted that where, as in this case, the parties' dispute primarily centered not upon plan action, but upon the legal *interpretation* of the language of plan articles (upon which interpretation plan action was based), the "arbitrary, capricious, abuse of discretion" standard was both unhelpful and inappropriate. In line with established precedent, he therefore urged the courts to adopt, in accord with general principles of contractual interpretation, a standard which construed the language of plan articles against a plan, and in favor of plan participants such as Quinn.

Quinn's position derived support from ERISA, pre- and post-ERISA precedent, and simple common sense. As noted, ERISA's express policy calls for the protection of plan participants by, among other things, guarantees of appropriate standards of responsibility for plan fiduciaries, and ready access to appropriate federal court remedies. Because pension plan articles are, at their heart, nothing less than provisions of a binding, enforceable contract between a plan and its participants, it fol-

lows that those articles should be susceptible to but one legal interpretation, ultimately reviewable as a matter of law by a court of competent jurisdiction, and not a group of laymen. To say otherwise, that courts are not allowed to render controlling legal interpretations of plan language, would be to permit different laymen, interpreting different plans, to give identical language different interpretations, without being subject to judicial scrutiny to avoid obvious inequities.

Once it is recognized that the judiciary must hold the ultimate responsibility for interpreting plan articles, it is apparent that the "arbitrary, capricious, abuse of discretion" standard is both unhelpful and inappropriate for the task of judicially determining whether a particular interpretation is correct. It is unhelpful because if the pension plan's interpretation is in accord with the court's, obviously there would be no abuse of discretion. If, on the other hand, the plan's interpretation ran contrary to law, an abuse would be shown on its face. The standard, quite simply, is not a useful tool for analysis or interpretation.

The "arbitrary, capricious, abuse of discretion" standard is, however, not merely unhelpful, but also inappropriate. As noted, ERISA's policy is directed to curbing the unbridled discretion of plan fiduciaries, and providing access to federal court remedies. The use of this standard clearly subverts this policy by providing plan fiduciaries with tremendous discretion in the interpretation of plan articles, and greatly limiting the scope of court review (which in turn limits a participant's access to and remedies in court). This subversion becomes all the more egregious when it is recognized that courts in *pre-ERISA* contexts, confronting disputes about the in-

terpretation of the language of plan articles, referred not to the "arbitrary, capricious, abuse of discretion" standard, but to ordinary principles of contractual interpretation in the course of judicial review.

Cases such as *Hoefel* v. *Atlas Tack Corporation,* 581 F.2d 1 (1st Cir. 1978), *cert. den.* 440 U.S. 913 (1979), and *Keller* v. *Graphic Systems of Akron, Inc.,* 422 F. Supp. 1005 (N.D. Ohio 1976) are directly on point. The *Keller* court, reviewing a plan's interpretation of its own articles, used ordinary contract law principles in reaching its decision:

> [T]he Plan offer having been accepted by [the participant], its language must be construed most strongly against [the Plan] since the existing implications could have been restricted by words of limitation. (Citation omitted). The [participant] is entitled to the benefit of all reasonable inferences applicable to the words used. (Citation omitted).

422 F. Supp. at 1011.

Similarly, in *Hoefel* it was stated that: "Where the employer establishes the terms of a pension plan, those terms should be construed in favor of the employee. (Citations omitted)." 581 F.2d at 7. Thus, courts in pre-ERISA situations did not hesitate to reject the "arbitrary, capricious, abuse of discretion" standard in favor of a standard construing plan articles under ordinary contract law principles such as those cited in *Keller* and *Hoefel.*

Certain post-ERISA cases continued this recognition that the arbitrary, capricious, abuse of discretion" standard is both unhelpful and inappropriate in reviewing a plan's interpretation of its own articles. *Shaw* v. *Kruidenier,* 470 F. Supp. 1375 (S.D. Iowa 1979), *aff'd mem.* 620

F.2d 307 (8th Cir. 1980), most carefully analyzed the question. The *Shaw* court had before it, among other things, a dispute on the construction of plan language. Explicitly considering the "immediate problem" of "the impact of the preemption provisions of ERISA" [*e.g.*, ERISA §§514(a), (b)(1), 29 U.S.C. §§1144(a), (b)(1)] which went into effect before the cause of action in *Shaw* arose, *Id.* at 1381, the Court held that "When the question is what do the terms of the plan mean," it would borrow from general contract law principles to create a body of *federal law* for the interpretation of plan articles, consider the plan an "adhesion contract," and construe the plan in favor of plan participants:

> Congress did not intend to render prior law irrelevant where it fairly accomodates the interests of the parties and is not inconsistent with ERISA's purposes. Moreover, *it was intended that federal courts would develop a body of federal substantive law in interpreting and construing private welfare and pension plans.* (Citation omitted).
>
> Obviously a body of law does not spring from whole cloth. *When the question is what do the terms of the plan mean, and the terms in question are not plainly inconsistent with ERISA, the Court finds no incompatibility between the pre-ERISA contract principles briefed by the parties, and the Congressional purpose to invest private benefit plans with an "equitable character" for which plan fiduciaries are accountable.* (Citations omitted). Therefore, in resolving plaintiff's contract claims the Court has borrowed from general contract principles relying principally on Iowa law. . .
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> The Court agrees with plaintiffs that the contract is an adhesion contract and that the Trust plan is to be construed in favor of plan participants in the event of any ambiguity. *See Keller* v. *Graphic Sys-*

tems of Akron, Inc., 422 F. Supp. [1005 (N.D. Ohio 1976)] at 1011. (Citations omitted).

470 F. Supp. at 1382.[5] (Emphasis Added).

Shaw was not only affirmed, but its rationale that pension plans are adhesion contracts to be construed strictly against their drafters and in favor of participants was expressly approved by the Eighth Circuit in *Landro* v. *Glendenning Motorways, Inc.*, 625 F.2d 1344, 1354 (8th Cir. 1980).[6]

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[5] The Court in *Shaw* was well aware of the "arbitrary, capricious, abuse of discretion" formula; *Bueneman's* reliance upon it was, in fact, cited in footnote 11 of *Shaw*. *Id.* at 1391. The *Shaw* Court, however, recognized in that same footnote that where "a question of law" is involved, the deference afforded to plan *action* by the "arbitrary, capricious, abuse of discretion" formula is inappropriate. In affirming *Shaw*, it appeared that the Eighth Circuit initially agreed with this proposition.

Shaw's reference to contractual principles emanating from state law was approved, despite arguments that the preemption provisions of ERISA prevented that approach, in *Matter of M & M Transportation Co.*, 3 B.R. 722, 725-6 (S.D.N.Y. 1980).

[6] Minnesota law, from which general principles of construction should be borrowed for federal law purposes in this case, is in accord with *Shaw* and *Keller*. As noted in *Telex Corporation* v. *Balch*, 382 F.2d 211 (8th Cir. 1967):

> "Minnesota law recognizes that when a contract bears more than one reasonable interpretation the ambiguity should be resolved against the party who drew the contract. (Citations omitted)." *Id.* at 216.

Similarly, in *Naftalin* v. *John Wood Company*, 263 Minn. 135, 116 N.W.2d 91 (1962), it was stated:

> "The words of an instrument are to be interpreted most strongly against the party using them." 116 N.W.2d at 98.

Quinn submits that ERISA's express protective policy and pre- and post-ERISA precedent—plus simple common sense—dictate that both the District Court and the Court of Appeals, confronting the issue of the legal interpretation of the BN Plan's Articles, should have referred, *as a matter of federal law,* to general principles of contractual interpretation in rendering a decision on that point. As noted, foremost among those principles is that which recognizes that the BN Plan's Articles, as an adhesion contract, must be construed most strongly against the BN Plan, with all reasonable inferences drawn in Quinn's favor. *After* the proper legal interpretation to be given the BN Plan's Articles had been determined, the courts could then have reviewed the BN Plan's *actions* under the "arbitrary, capricious, abuse of discretion" formula, to determine whether the Respondents acted properly in denying Quinn pension benefits in light of the judicially-approved interpretation.

Both the District Court and the Court of Appeals failed to do this. In adopting the "arbitrary, capricious, abuse of discretion" standard in considering the legal interpretation of the Plan's articles, they gave undue deference to the decision of laymen on a question of law[7] and

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[7] The need for extensive judicial review of lay fiduciaries' decisions on plan interpretation is aptly illustrated by the circumstances of this case. Initially, it should be noted that the Eighth Circuit, though denying Quinn the recovery of pension benefits sought, in its opinion made it clear that the BN Plan's *actual interpretation* of its own articles was incorrect.

Under Section 5.4 of its Articles, the BN Plan was only entitled to offset the actuarial equivalent of:

1. Vested benefits which a participant has received or is entitled to receive;

limited the scope of their review, contrary to pre- and post-ERISA case law. As will be shown, Quinn

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[7] (Continued)

2. Under *another* pension plan which meets the requirements of section 401(a) of the Internal Revenue Code;
3. With respect to service with another employer which is included in the participant's period of continuous service under the BN Plan.

In construing this language, the BN Plan "offset the actuarial equivalent of the value of the retirement benefits Quinn was receiving from the Milwaukee Road,"—the $75,000 annual payments made under Quinn's employment agreement with the Milwaukee Road. (See p. A-4 of Appendix A). However, as the Eighth Circuit ultimately held, the Plan was not entitled to such an offset, but could only offset "the actuarial equivalent of the amount that Quinn has been entitled to receive from the Milwaukee Road Pension Plan for the years 1940-1966." (*Id.*, p. A-10). Thus, the Eighth Circuit made it clear that the Plan's interpretation of its own Articles was incorrect.

The BN Plan's principal theory underlying this incorrect interpretation itself wars with common sense. In both the District Court and the Court of Appeals, Respondents argued that their offset of Quinn's $75,000 in annual post-employment contractual benefits was proper because Quinn's reception of these benefits from non-pension plan sources constituted a "constructive receipt" of Milwaukee Road Pension Plan benefits. Supposedly, Quinn "constructively received" Milwaukee Road Pension Plan benefits because he "anticipatorily traded" these benefits for the contractual payments received from the non-pension plan sources. This, in Respondents' view, justified their offset which, as noted above, could only be made if Quinn "received" or was "entitled to receive" Milwaukee Road Pension Plan benefits. That respondents' "constructive receipt" interpretation could never survive any common sense analysis can be shown through simple analogy.

Quinn, in March of 1970, immediately prior to the time he joined the Milwaukee Road, can be compared to one

should have prevailed *even if* sole reference were had to the "arbitrary, capricious, abuse of discretion" standard. Accordingly, when the unhelpful and inappropriate nature of this standard for the narrow legal issue of plan interpretation is recognized, it is even more apparent that the District Court and the Court of Appeals erred in denying Quinn the full relief sought.

In sum, the question of what standard should govern the judicial review of a pension plan's interpretation of its own articles presents an important federal question in both legal and human terms. In a legal perspective, it has been shown that in pre-ERISA situations, courts looked to ordinary principles of contractual interpretation rather than the "arbitrary, capricious, abuse of dis-

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[7] (Continued)

wishing to deposit money in a time account at a certain bank. This bank offers the potential depositor interest (Quinn's salary) during the term of the depository relationship (Quinn's employment). As an added inducement, the bank informs the depositor that, at the time of deposit, he may specify one of two gifts which will be given to him when the time account ends. One gift is a rotisserie with a $50.00 retail value (Quinn's contractual post-employment benefits); the other is another rotisserie, but with a retail value of only $30.00 (Quinn's potential Milwaukee Road Pension Plan benefits). The bank also gives the depositor the right to change his mind during the term of the depository relationship, and to irrevocably opt to receive the other gift not originally specified. The customer opens the time account with the bank (Quinn joins the Milwaukee Road), and (quite obviously) specifies his wish to receive the rotisserie with the higher retail value. When the time account ends (Quinn retires) the customer goes to the bank, and receives the rotisserie with the higher retail value (Quinn receives contractual post-employment benefits). For obvious reasons, the customer never opts for the cheaper rotisserie.

cretion" standard in reviewing a plan's interpretation of its own articles. ERISA, of course, was expressly designed to protect the rights of participants by, among other things, curbing the discretion of plan fiduciaries and providing ready access to Federal court remedies. Obviously, the substitution of the "arbitrary, capricious, abuse of discretion" standard for a standard which looks to ordinary principles of contractual interpretation would afford plan fiduciaries *more* discretion—and plan participants *less* rights and remedies—than afforded before ERISA was enacted into law. Obviously, this deprivation of participant rights and remedies was not intended by Congress when it drafted and enacted the statute.

The question of the appropriate standard for judicial review of a plan's interpretation of its own articles poses a problem which should be viewed in not only legal but

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[7] (Continued)

Under Quinn's view of this analogy, the customer "received" the rotisserie with the higher retail value. Respondents, however, would argue that the customer "received" the rotisserie with the lower retail value, because he "anticipatorily traded" his rights for the cheap model to get the better model.

Obviously, Quinn's approach easily comports with the ordinary meaning of the word (and, of course, would be clearly correct if all reasonable inferences were drawn in Quinn's favor). On the other hand, Respondents' approach does violence to the plain meaning of "received." From the point of simple common sense, it is clear Quinn should prevail.

Despite the clarity of Quinn's approach, the BN Plan fiduciaries, left to their own devices, chose to deny benefits by twisting the language of their plan's Articles. The "arbitrary, capricious, abuse of discretion" standard permits such results to stand. Quinn submits that ERISA was not intended to countenance such results.

also human terms. Nothing less than the protection of the rights and remedies of millions of plan participants is here at stake. As this Court is well aware, a District Court's decision on the legal issue of the interpretation of contractual language in a run-of-the-mill contract case will be reviewed *de novo* by the responsible Court of Appeals; despite a District Judge's obvious expertise in resolving legal issues, the reviewing courts will give no deference whatsoever to his decision on contractual interpretation.

In this context, Quinn submits that it is ludicrous for lay pension plan fiduciaries to be afforded, through the use of the "arbitrary, capricious, abuse of discretion" standard, far more discretion in interpreting the essentially contractual language of their plan's articles than a Court of Appeals affords a District Judge under legally identical circumstances. If the "arbitrary, capricious, abuse of discretion" standard is held applicable to a review of a plan's interpretation of its own articles, the federal courts will in essence be saying that a participant in a pension plan, with possibly his entire financial future at risk, will be given far less access to judicial review and relief than a consumer suing on an ordinary sales contract. ERISA was not enacted to this end.

ERISA's protective policy is clear. To adopt the "arbitrary, capricious, abuse of discretion" standard for reviewing a plan's interpretation of its own articles would seriously undermine that policy, and leave plan participants with far less rights and remedies than they enjoyed prior to ERISA's enactment. Accordingly, this Court should grant Quinn's Petition for a Writ of Certiorari, and consider the important federal question of the appropriate standard for such review.

II.

Quinn's Petition Should be Granted Because it Brings Before the Court an Issue Regarding the Interpretation of Pension Plan Articles on which Federal Courts of Appeals Have Rendered Conflicting Decisions.

Although the unhelpfulness and inappropriateness of the Eighth Circuit's "arbitrary, capricious, abuse of discretion" standard for the judicial review of a plan's interpretation of its own articles provides a compelling and wholly sufficient reason for this Court to grant Quinn's Petition, it should also be noted that the Eighth Circuit's decision on the merits of Quinn's case conflicts with the decision of another federal court of appeals on an identical issue, providing an additional basis for this Court's review.

The issue upon which conflicting decisions have been rendered involves the legal interpretation of the phrase "entitled to receive" in a pension benefit context. In particular, the narrow issue can be stated as: "When does a pension plan participant become 'entitled to receive' pension benefits?"

As noted, Respondents have attempted to justify their offset of pension benefits due Quinn by relying on that portion of Section 5.4 of the BN Plan's Articles permitting an offset of benefits a participant is "entitled to receive" from a pension plan other than the BN Plan itself. In this regard, Respondents have claimed (among other arguments) that Quinn was and is "entitled to receive" Milwaukee Road Pension Plan benefits because of his purported status as a participant in that Plan, even though it is uncontroverted that Quinn has never received Milwaukee Road Pension Plan benefits, and has been precluded from receiving such benefits by virtue of

his 1970 and 1978 employment agreements with the Milwaukee Road.

The Eighth Circuit, agreeing with Respondents on this point, held that their offset was proper on the *sole* ground that "Quinn has been 'entitled to receive' benefits pursuant to the Milwaukee Road Pension Plan and continues to be 'entitled to receive' pension benefits even though he acquired rights to receive $75,000 annually 'in lieu of' pension benefits from the Milwaukee Road Pension Plan." (See p. A-9 of Appendix A). The Eighth Circuit's conclusion that Quinn was "entitled to receive" Milwaukee Road Pension Plan benefits was based solely upon his purported status as a participant in that plan* whose rights became vested pursuant to ERISA §203(a)(3), 29 U.S.C. §1053(a)(3), on his 65th birthday, since the court acknowledged that Quinn has never received that plan's benefits, and has always been legally precluded from receiving them. (*Id.*, pp. A-3, A-9). Thus, the Eighth Circuit in effect held that plan participants are "entitled to receive" pension benefits even when they are legally precluded from receiving such benefits!

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*Quinn has disputed his status as a full participant in the Milwaukee Road Plan, on the grounds that: (i) under his employment agreements with the Milwuakee Road he was precluded from participation unless and until he irrevocably exercised his contractual option to elect benefits from the Milwaukee Road Plan; and (ii) this option was never exercised. Quinn submits that even assuming, *arguendo*, participancy in the Milwaukee Road Plan, he is still entitled to prevail because, as discussed below, as a matter of law he neither "received" nor was "entitled to receive" Milwaukee Road Plan benefits, absolute preconditions for the BN Plan's offset.

In both the District Court and the Court of Appeals, Quinn argued that the foregoing analysis urged by Respondents and ultimately adopted by the Eighth Circuit ran contrary to established case law interpreting the phrase "entitled to receive" in a pension benefit context. Disputing the contention that one is "entitled to receive" benefits when admittedly he is legally precluded from obtaining them, Quinn noted that precedent is clear that a participant must possess a *present, unconditional right* to receive pension benefits before he can be said to be "entitled to receive" them. Because it was uncontroverted that Quinn never had a present, unconditional right to receive pension benefits during the relevant period subsequent to May 8, 1976,[9] Quinn argued that, as a matter

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[9] Quinn had no such right for *each* of the following reasons:

1. Prior to October 1, 1978, while Quinn was bound by the terms of his March 16, 1970 employment agreement, he never retired, and retirement is an absolute precondition for receiving benefits;
2. Although under his 1970 employment agreement Quinn had an option to elect to receive benefits from the Milwaukee Road's Pension Plan (which would have required him to forever forfeit annual non-pension plan payments for life under that agreement of at least $75,000.00), he never exercised that option. [Precedent is clear, of course, that options are unenforceable unless properly exercised. *See, e.g., Goodale* v. *Midwest Dairy Products Corporation,* 275 Ill. App. 252, 259 (1934)];
3. Finally, since October 1, 1978, the date of his retirement, Quinn has been barred from receiving Milwaukee Road Pension Plan benefits because under his renegotiated employment agreement of that date, he has received only payments from non-pension plan sources.

of law, he was never "entitled to receive" Milwaukee Road Pension Plan benefits, and, therefore, Respondents' offset was improper.

Quinn's assertion that an employee must possess a present, unconditional right to receive pension benefits before he can be said to be "entitled to receive" them finds support in precedent such as *Kenny* v. *Hampton,* 475 F.2d 1323 (D.C. Cir. 1973), *Wheeler* v. *Board of Administration of the Public Employees' Retirement System,* 25 Cal. 3d 600, 159 Cal. Rptr. 336, 601 P.2d 568 (1979), and *Olson* v. *Republic Metals & Roofing Materials, Inc.,* 347 Ill. App. 422, 107 N.E.2d 57 (1952).

Kenny was a suit brought by retired employees, who under the Civil Service Retirement Act of 1930 had an option to receive either a lump sum settlement or a deferred annuity to begin at age 62. An amendment to the Act provided for a cost-of-living annuity increase for those retired employees "receiving or entitled to receive" an annuity in 1958. The employees, who had chosen the deferred annuity, had retired before 1958, but had not reached the age of 62 by that year. The question, therefore, was whether they were "entitled to receive" benefits in 1958; if they were, the employees would be eligible for the cost-of-living increase. The Court of Appeals for the D. C. Circuit held that the employees were not "entitled to receive" the annuity in 1958 even though they had made a timely election to receive it, because in 1958 they had not yet reached their 62nd birthdays. Because they therefore had no present, unconditional right to receive the deferred annuity in 1958, there was no "entitlement to receive." 475 F.2d at 1325.

In *Wheeler,* a retired state correctional officer sought to set aside a decision of the Board of Administration

of the Public Employees' Retirement System which, as here, had resulted in an offset of certain pension benefits. The Board attempted to justify its offset under an interpretation of a statute requiring the reduction of state industrial liability retirement benefits by amounts a retired state employee is "entitled to receive" in federal retirement or disability benefits. Finding against the Board and in favor of the officer, the California Supreme Court, sitting *en banc,* held that when the words "entitled to receive" were construed in favor of the officer, he was "entitled to receive" only those social security benefits which were 'actually paid" to him after the deduction of a *federally* mandated offset for workers' compensation benefits. 601 P.2d at 571. In other words, "entitled *to receive*" was held to embrace only benefits an employee had a present, unconditional right to receive.

In *Olson,* a pension agreement provided that an executive, upon attaining the required retirement age and giving written notice, could elect to voluntarily retire from his corporation and thereby become "entitled to benefits" outlined in the agreement. While the executive attained retirement age, he failed to perform the aforesaid necessary conditions to voluntary retirement. Thus, the appellate court held that the executive's executrix was barred from recovering retirement pay because "[r]etirement was a requisite without which neither [the executive] in his lifetime nor his executrix after his death, would be entitled to receive retirement benefits." 107 N.E.2d at 58.

No matter which standard of review is ultimately deemed appropriate by this Court, Quinn submits that if the decisions in *Konny, Wheeler* and *Olson* had been followed, he would have prevailed on the merits because

he never had a present, unconditional right to receive Milwaukee Road Pension Plan benefits, and was therefore never "entitled to receive" such benefits.[10] The Eighth Circuit's rejection of this precedent not only resulted in a decision adverse to Quinn, but also precipitated a conflict with the decision of the Court of Appeals for the D.C. Circuit in *Kenny*. The phrase "entitled to receive" is commonly found in pension plan articles, not to mention statutes and administrative publications, and its interpretation in a pension benefit context should be of national legal concern. Accordingly, Quinn's Petition for a Writ of Certiorari should be granted to enable this Court to resolve the conflicting decisions of federal courts of appeals on the proper interpretation of the phrase "entitled to receive" in a pension benefit context.

CONCLUSION

Quinn's Petition for Writ of Certiorari should be granted: (i) to bring before the Court the important federal question of the appropriate standard for reviewing a pension plan's interpretation of its own articles; and (ii) to enable the Court to resolve the conflict between federal courts of appeals on the interpretation of the phrase "entitled to receive" in a pension benefit context.

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[10] The Eighth Circuit's holding equating the phrase "entitled to receive" with the concept of vesting even runs contrary to Section 5.4 of the BN Plan's Articles. As noted, that section allows an offset of "any vested benefit which such participant . . . is entitled to receive . . .", contemplating a distinction between "vested" benefits and benefits a participant is "entitled to receive."

The issues Quinn seeks to bring before the Court are important in not only legal, but human terms as well. It cannot be disputed that whether a pension plan's interpretation of its own articles should be governed by an "arbitrary, capricious, abuse of discretion" standard, weighed heavily in favor of plans, rather than a standard construing the language of such articles against relevant plans and in favor of plan participants, is an issue that directly affects the pension rights and benefits of millions of citizens. If the Eighth Circuit's decision adopting the former standard is allowed to stand, ERISA will, in effect, be turned on its head, with participants being deprived of procedural rights they enjoyed prior to its passage, and placed in a position far less advantageous than that of an ordinary consumer seeking the legal protection of his rights in an ordinary commercial context.

The same can be said with respect to the second issue before the Court — when does a pension plan participant become "entitled to receive" pension benefits. This phrase, commonly used in pension benefit matters, has become subject to conflicting interpretation by courts of appeals. The interpretation adopted by the Eighth Circuit is, again, one weighed heavily against the interests of plan participants. Because ERISA was designed to nurture and protect participants' rights, and not to throw obstacles in the path of participants' realization of pension benefits, Quinn urges this Court to consider whether the Eighth Circuit's restrictive interpretation should be approved over one more attuned to the express protective policies of ERISA.

For these reasons, Quinn respectfully requests this Court to enter its Order granting Quinn's Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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FEBRUARY 26, 1982

Appendix

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 81-1035 and 81-1086

No. 81-1035

WILLIAM J. QUINN,

Appellee,

v.

BURLINGTON NORTHERN INC. PENSION PLAN, BURLINGTON NORTHERN INC. PENSION TRUST and THE FIRST TRUST COMPANY OF SAINT PAUL, a Minnesota banking corporation, as Trustee,

Appellants.

Appeal from the United States District Court for the District of Minnesota.

No. 81-1086

WILLIAM J. QUINN,

Appellant,

v.

BURLINGTON NORTHERN INC. PENSION PLAN, BURLINGTON NORTHERN INC. PENSION TRUST and THE FIRST TRUST COMPANY OF SAINT PAUL, a Minnesota banking corporation, as Trustee,

Appellees.

Appeal from the United States District Court for the District of Minnesota.

Submitted: October 12, 1981

Filed: November 30, 1981

Before LAY, *Chief Judge*, McMILLIAN, *Circuit Judge*, and COLLINSON,* *Senior District Judge*.

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* William R. Collinson, Senior District Judge, Eastern and Western Districts of Missouri, sitting by designation.

LAY, *Chief Judge.*

William J. Quinn is a participant in the Burlington Northern Inc. Pension Plan based on his employment with the Chicago, Burlington and Quincy Railroad and with the Burlington Northern, Inc. He brought suit against the Burlington Northern Pension Plan in the federal district court claiming the Plan Administrator erred in offsetting the Burlington Northern pension payments to him under the Burlington Plan with monies he receives under an employment agreement with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. The parties filed cross motions for summary judgment.

The district court, the Honorable Robert G. Renner presiding, upheld the Administrator's offset between June 1, 1976, and October 1, 1978, but declared Quinn to be entitled to larger benefits after the latter date. This appeal and cross-appeal followed. We affirm the district court in part and reverse in part and require reinstatement of the Plan Administrator's ruling requiring an offset both before and after October 1, 1978.

Facts.

From February 1940 to April 1954, Quinn was employed by the Soo Line Railroad. From April 1, 1954, to October 12, 1966, Quinn was employed by the Milwaukee Road. Quinn was then hired by the Chicago, Burlington & Quincy Railroad, (hereinafter CB&Q), a predecessor railroad of the Burlington Northern, (hereinafter BN). As a precondition to commencing employment with CB&Q, all of Quinn's prior railroad service was credited and included as continuous service under CB&Q's pension plan. Quinn served as president, chief executive officer and as a director of CB&Q until March 1, 1970. On March 1, 1970, the CB&Q and other companies merged to form the BN. Quinn then became vice-chairman of BN's board of directors, a position he held for two weeks, resigning March 15, 1970.

Quinn then entered into an employment agreement with the Milwaukee Road that was to end May 7, 1981. It provided for an annual salary during that period of not less than $150,000. After May 7, 1981, Quinn was to be paid, at his option, either (1) one-half his annual salary, but not less than $75,000 per year, or (2) pension benefits under the Milwaukee Road's pension plan.[1] To select the Milwaukee Road Pension Plan, Quinn was required to irrevocably elect in writing to receive these benefits and consequently forfeit all rights to receive the lifelong "one-half of annual salary." The amounts to be forfeited would have substantially exceeded any amounts which Quinn could have received under the Milwaukee Road Pension Plan. Quinn never elected to take the Milwaukee Road Pension Plan benefits in lieu of the one-half salary.

In December 1977, the Milwaukee Road filed for reorganization under the Bankruptcy Act. Quinn's employment agreement was subsequently renegotiated in terms less favorable to him. The new agreement called for Quinn (1) to retire no later than October 1, 1978, (2) to receive no more than $45,000 per year from October 1978 to May 1981 as a consulting fee, and (3) to receive $75,000 annually beginning October 1, 1978. Under this agreement, no option to receive pension funds was given. Quinn has received these payments.

In March 1979, Quinn was notified by the BN Plan representatives that he was to receive monthly pension benefits in the amount of $448.42 under the BN Plan. He was told that he was entitled to 30 years of "continuous service" from 1940 to 1970. Based on this 30 years of service, Quinn would be entitled to recieve a monthly benefit of $3,927.32. However, the representatives stated that the BN Plan would only make payment to Quinn

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[1] Quinn accrued vested pension benefits under the Milwaukee Road Pension Plan of approximately $63,000 per year, based *in part* on his railroad service from February 19, 1940 through October 11, 1966.

at the rate of $448.42 per month based on Quinn's three years and five months with CB&Q and BN. The representatives claim that under section 5.4 of the relevant Plan articles, the Plan intended to offset the actuarial equivalent of the value of the retirement benefits Quinn was receiving from the Milwaukee Road against the benefit payments due him under the BN Plan for service from 1940 to 1970.

Quinn exhausted his administrative remedies and sued in the federal district court alleging that he is entitled to receive a monthly pension benefit for life in the amount of $3,937.32. He claims this amount for each month since June 1, 1976, the first day of the month following his 65th birthday.[2] The district court held that *prior* to October 1, 1978, the Plan Administrator properly offset certain pension benefits ordinarily due Quinn because during that time he was "entitled to receive" similar benefits from the Milwaukee Road Pension Plan. However, the district court held that, with respect to the period *after* October 1, 1978, such an offset was improper. It reasoned that postretirement benefits Quinn received from the Milwaukee Road, under the terms of the renegotiated employment agreement, were not within the proscriptions of section 5.4 of the BN Plan.

The dispute in this case rests upon the interpretation of language in section 5.4 of the BN Plan which provides for an offset of benefits received under other qualified plans. The plan provides in pertinent part:

> [t]he amount of monthly pension payable to a participant . . . shall be reduced by the actuarial equivalent of any vested benefit which such participant has received, or which he is entitled to receive, under any other pension plan which meets the requirements of section 401(a) of the Internal Revenue Code with

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[2] The BN Plan and the trustees have made payments from the trust fund to Quinn at the rate of $448.42 per month only, retroactive to June 1, 1976.

respect to service with another employer which is included in such participant's period of continuous service under this Plan. . . .

Section 5.4

Standard of Review.

Review by the courts of the Plan Administrator's decision is limited. A reviewing court generally will intervene in the administration of a pension plan only where the trustee's action is arbitrary, capricious, or an abuse of discretion. *Morgan* v. *Mullins,* 643 F.2d 1320, 1321 (8th Cir. 1981); *Bueneman* v. *Central States, Southeast and Southwest Areas Pension Fund,* 572 F.2d 1208, 1209 (8th Cir. 1978); *Phillips* v. *Kennedy,* 542 F.2d 52, 54 (8th Cir. 1976); *Maness* v. *Williams,* 513 F.2d 1264, 1265 (8th Cir. 1975). Although, where the trustee is actually interpreting statutory law the "arbitrary, capricious, or abuse of discretion" standard of review is inapplicable. *Winer* v. *Edison Bros. Stores Pension Plan,* 593 F.2d 307, 312 (8th Cir. 1979).

Quinn argues, however, that the "abuse of discretion" standard is applicable only when the court reviews plan *action* and not when it reviews the interpretation of the language of plan articles. He contends that here, where the language of section 5.4 is at issue, recourse should be had to ordinary principles of contract interpretation. State law principles are not to be used as state law; such use would contravene ERISA's preemption provisions. Instead, Quinn urges the court to borrow the contract principles to use as federal law where ERISA is silent. *Landro* v. *Glendenning Motorways, Inc.,* 625 F.2d 1344, 1354 (8th Cir. 1980); *Shaw* v. *Kruidenier,* 470 F. Supp. 1375, 1382 (S.D. Iowa 1979), *aff'd mem.,* 620 F.2d 307 (8th Cir. 1980).

However, despite *Shaw* and dicta in *Landro,* this court has recently indicated that it will apply the "arbitrary, capricious and abuse of discretion" standard when re-

viewing a trustee's interpretation of the language of a pension plan. *Morgan* v. *Mullins*, 643 F.2d 1320 (8th Cir. 1981). Other circuits are in agreement. For example, the Fifth Circuit held recently in *Paris* v. *Profit Sharing Plan for Employees of Howard B. Wolf, Inc.*, 637 F.2d 357 (5th Cir. 1981), that "[a]lthough the determination of eligibility for pension benefits seems to be a matter of contract law, 'the clear weight of federal authority' mandates that the trustee's determinations of eligibility are to be upheld unless arbitrary or capricious." *Id.* at 362. *See also Smith* v. *CMTA-IAM Pension Trust*, 654 F.2d 650, 654 (5th Cir. 1981); *Gordon* v. *ILWU-PMA Benefit Funds*, 616 F.2d 433 (9th Cir. 1980).

The "arbitrary, capricious, or abuse of discretion" standard is the appropriate standard to use when reviewing the Administrator's interpretation of section 5.4 of the BN Pension Plan. *See Morgan* v. *Mullins*, *supra*.

Merits.

The district court found that the Administrator's determination that section 5.4 was applicable to the period prior to October 1, 1978, was not arbitrary. We agree. The court did find, however, that the Administrator abused his discretion with regard to the period after the October 1, 1978 renegotiation of plaintiff's employment agreement. We disagree with the latter finding.

All parties agree that section 5.4 was enacted to prevent receipt of duplicate pension benefits for the same period of railroad service. Under section 5.4 an offset against the BN Plan benefits otherwise due the recipient may be employed for:

(1) Vested benefits which a participant has received or is entitled to receive;

(2) Under another pension plan which meets the requirements of section 401(a) of the Internal Revenue Code.

(3) With respect to service with another employer which is included in the participant's period of continuous service under the plan.

The district court found that for the period prior to October 1, 1978, Quinn was "entitled to receive" benefits from the Milwaukee Road Pension Plan. It also found that, under the terms of the initial employment agreement, Quinn was then a participant in the Milwaukee Road Pension Plan, a qualified plan which meets the requirements of Internal Revenue Code section 401(a). Quinn was found to have acquired a nonforfeitable right to pension benefits upon attainment of normal retirement age. The court also held under the terms of section 5.4 ("entitled to receive") Quinn was not required to have an unconditional right to receive benefits. The district court found that, when viewed in terms of the admitted policy of section 5.4 to avoid duplicate benefits for the same period of continuous service, Quinn was still "entitled to receive" even though he never elected to take pension benefits in lieu of other retirement benefits. Because Quinn was a plan participant, 29 U.S.C. § 1053 mandated that plaintiff had a nonforfeitable right to such benefits.[5] We agree with these findings. However, contrary to the district court, we hold that even after October 1, 1978, an offset by the BN Plan is also proper.

An examination of Burlington Northern's argument shows why the offset is correct. That argument is fairly

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[5] Section 203 of ERISA (Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1053) provides, *inter alia*, that "[e]ach pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age. . . ." ERISA (29 U.S.C. § 1002(19)) provides that "[t]he term 'nonforfeitable' when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan."

simple. Because Quinn was an employee of the Milwaukee Road during the period subsequent to March 15, 1970, he was a participant in the Milwaukee Road Pension Plan. This plan is fully qualified under section 401(a) and is required by law to provide pension benefits to its vested participants which are nonforfeitable and which may not be assigned or alienated. When Quinn reached normal retirement age on May 5, 1976, his right to receive pension benefits from the Milwaukee Road Pension Plan then became fully vested. Quinn's election on October 1, 1978, to receive $75,000 annually in lieu of pension benefits from the Milwaukee Road Pension Plan does not nullify the BN Plan's statutory obligation to provide Quinn, should he so request, the pension benefits which became vested pursuant to the Plan upon his reaching age 65. Thus, section 5.4 of the BN Plan is applicable in determining the amount of benefits Quinn is entitled to receive under that plan for the periods both before and after October 1, 1978.

BN argues that the district court was incorrect in holding that Quinn was a participant in the Milwaukee Road Pension Plan by reason of his initial employment agreement. It asserts that Quinn was a participant in the Milwaukee Road Pension Plan by virtue of his status as an employee of the Milwaukee Road and not by virtue of the employment agreement. Once Quinn became entitled to nonforfeitable rights to pension benefits under the Milwaukee Road Pension Plan (i.e. when he turned 65) he was forever a participant in the Milwaukee Road Pension Plan and at all times subsequent to May 5, 1976, legally entitled to receive pension benefits from the Milwaukee Road Pension Plan.

We agree that Quinn is a full participant in the Milwaukee Road Pension Plan. Paragraph 2.1 of that plan provides:

> All of the Company's Employees on the Effective Date shall become Participants in the Plan on the Effective Date.

The effective date of the Milwaukee Road Pension Plan was January 1, 1976. Since Quinn was an employee of the Milwaukee Road on that date he was a participant in the plan. Under the Plan his rights to pension benefits were to become vested or nonforfeitable on May 5, 1976. *See* ERISA § 203 (a)(3), 29 U.S.C. § 1053(a)(3). Thus, Quinn was a full participant and the Milwaukee Road's obligation to meet the minimum funding standards set by ERISA arose solely because of Quinn's rights to benefits thereunder; Quinn was not a participant for funding purposes only.

Quinn's claim that the 1970 employment agreement excludes him from participation is incorrect. First, the agreement precedes the 1976 Plan which made each employee a participant. Also, both the 1970 agreement and the 1978 modification provide for the trustee of the Milwaukee Road to pay Quinn, "in lieu of any pension to which he is entitled under the Debtor's (Milwaukee Road's Pension Plan, the sum of Seventy-five Thousand ($75,000) Dollars annually. . . ." These facts show that Quinn actually is a full participant who has been *entitled to receive* pension benefits from the Milwaukee Road Pension Plan.

Conclusion.

We conclude that Quinn is a participant in the Milwaukee Road Pension Plan, a qualified plan, by virtue of his employment with the Milwaukee Road. His rights to pension benefits became vested and nonforfeitable on his 65th birthday, May 5, 1976. Quinn has been "entitled to receive" benefits pursuant to the Milwaukee Road Pension Plan and continues to be "entitled to receive" pension benefits even though he acquired rights to receive $75,000 annually "in lieu of" pension benefits from the Milwaukee Road Pension Plan. Thus, we hold that the district court erred in finding that the BN Plan could not offset the actuarial equivalent subsequent to October 1, 1978.

The district court focused on the terms of the employment agreement in reaching its bifurcated decision. We feel this was incorrect. Quinn became a participant and was entitled to receive benefits not because of the employment agreement but because of his employment by the Milwaukee Road. Thus, we conclude the finding of the district court in this regard is clearly erroneous.

Since we have determined that Quinn has been entitled to receive pension benefits from the Milwaukee Road Pension Plan, then, pursuant to section 5.4 of the BN Plan, the Plan Administrator can offset the amount due Quinn for his years of actual and credited service by the actuarial equivalent of the amount Quinn has been entitled to receive from the Milwaukee Road Pension Plan for the years 1940-1966.[4]

The judgment of the district court is affirmed in part and reversed in part, in accord with this opinion. The judgment of the district court upholding the Plan Administrator's ruling applying an actuarial offset to BN pension benefits prior to October 1, 1978, is affirmed. The judgment of the district court finding that the Plan Administrator abused his discretion by offsetting benefits subsequent to October 1, 1978, is reversed and remanded.

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[4] Quinn is presently receiving $448.42 per month from the BN Plan. This payment is based upon his 3½ years of service with the CB&Q and the Burlington Northern and is the minimum that Quinn can be paid. Section 5.4 provides that the amount of the monthly pension shall not be reduced below the amount which would have been payable if the period of service with another employer were excluded from the participant's period of continuous service under the BN Plan.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

William J. Quinn,

Plaintiff,

vs.

Burlington Northern Inc. Pension Plan, Burlington Northern Inc. Pension Trust and the First Trust Company of Saint Paul, a Minnesota banking corporation, as Trustee,

Defendants.

ORDER AND MEMORANDUM

Civil 3-80-211

This matter comes before the Court on cross-motions for summary judgment. Frederick Lochbihler, Esq., appears for the plaintiff and James Littlefield, Esq., appears for the defendant.

Based upon the briefs and arguments of counsel and all the files and records herein,

IT IS HEREBY ORDERED that

1. Plaintiff's motion for summary judgment is granted in part and denied in part;

2. Defendant's motion for summary judgment is granted in part and denied in part;

All in accordance with the following memorandum.

Dated: December 12, 1980.

/s/ Robert G. Renner
Robert G. Renner
United States District Judge

MEMORANDUM

Both parties in this action submitted motions for summary judgment pursuant to Rule 56, F.R.Civ.P. There are no disputes as to the material facts, and it is agreed that the issues before the Court are legal ones. This Court has jurisdiction under 29 U.S.C. §1132.

The dispute revolves around language in the Burlington Northern Pension Plan (hereinafter "plan") which provides for an offset of benefits received under other qualified plans. In pertinent part, the plan provides that

> the amount of monthly pension payable to a participant . . . shall be reduced by the actuarial equivalent of any vested benefit which such participant has received, or which he is entitled to receive, under any other pension plan which meets the requirements of section 401(a) of the Internal Revenue Code with respect to service with another employer which is included in such participant's period of continuous service under this Plan . . . . Section 5.4.

Plaintiff is a participant in the plan based on his employment with the Chicago, Burlington and Quincy Railroad Company and with Burlington Northern Inc. (hereinafter BN) from October, 1966, until his resignation in March, 1970. Thereafter, plaintiff entered an employment agreement with the Chicago, Milwaukee, St. Paul and Pacific Railway Company (hereinafter "Milwaukee Road"). That agreement, guaranteed by the Milwaukee Land Company, a Milwaukee Road subsidiary, and by the Chicago Milwaukee Corp., the Milwaukee Road parent company, was to run from March, 1970, to May, 1981. It provided, among other things, that after May 7, 1981, plaintiff would be paid, at his option, *either* (1) one-half his annual salary, but not less than $75,000 per year, *or* (2) pension benefits under the Milwaukee Road pension plan.

In order to exercise this option, plaintiff was required to irrevocably elect, in writing, to receive pension benefits in lieu of one-half his annual salary. Plaintiff did not exercise this option during the lifetime of the agreement.

In October, 1978, plaintiff's employment agreement was renegotiated. The new agreement called for his immediate retirement and provided for annual payments of $75,000 per year from Milwaukee Road's general corporate funds or from the general corporate funds of the Milwaukee Land Company and/or the Chicago Milwaukee Corp. No option to receive pension benefits was given.

In February, 1979, plaintiff inquired as to whether he was entitled to pension benefits under the BN plan. Following correspondence and meetings between the parties, the plan trustees began paying plaintiff benefits under the plan, offset by the actuarial equivalent of benefits they contend he received from the Milwaukee Road and in accordance with their interpretation of §5.4.

Plaintiff exhausted his administrative remedies and, thereafter, brought this action, alleging that the offset is improper under the terms of the BN plan.

I.

In the Employee Retirement Income Security Act (ERISA), Congress has imposed certain obligations on trustees of pension plans, including the duty to act to protect the plan fund and plan participants. *Talarico* v. *United Furniture Workers Pension Fund A*, 479 F.Supp. 1072 (D.Neb. 1979). Courts are hesitant to interfere with trustees' discretion in administering a plan and in carrying out these statutorily imposed obligations. *Id.*

It is well settled, in this Circuit, that judicial review of actions taken by trustees is limited, under certain circumstances, to whether those actions were arbitrary

and capricious or an abuse of discretion. *See Bueneman v. Central States, Southeast and Southwest Areas Pension Fund,* 572 F.2d 1208 (8th Cir. 1978). While this standard is inapplicable to issues of statutory interpretation, *Winer* v. *Edison Bros. Stores Pension Plan,* 593 F.2d 307 (8th Cir. 1979), or to questions of law, *Shaw* v. *Kruidenier,* 470 F.Supp. 1375 (S.D.Ia. 1979), the Court believes that it is appropriate, in this instance, to defer to the trustees' interpretation of the plan provisions to the extent that their interpretation is neither arbitrary and capricious nor an abuse of discretion. This approach is consistent with the law of this Circuit as set forth in *Bueneman.*[1]

II.

Nevertheless, the Court finds that the trustees abused their discretion, in part, and therefore, grants plaintiff's motion for summary judgment with regard to the period following October, 1978.

The disputed plan provision, all parties agree, was enacted to prevent receipt of duplicate pension benefits for the same period of railroad service. Section 5.4 may be employed only for:

(1) vested benefits which a participant has received or is entitled to receive

(2) under another pension plan which meets the requirements of Section 401(a) of the Internal Revenue Code

(3) with respect to service with another employer which is included in the participant's period of continuous service under the plan.

---

[1] In *Bueneman, supra,* the Court faced issues of interpretation of plan provisions with regard to who was a party to the plan. Here the trustees were faced with similar plan interpretation issues and acted with consistency and to preserve the economic stability of the fund.

Based upon a review of this language and the applicable law, the Court is convinced that the offset of the optional pension benefits under plaintiff's initial employment agreement with the Milwaukee Road was appropriate.

It is clear that, under the terms of the initial employment agreement, plaintiff was a participant in the Milwaukee Road plan[2] and acquired a non-forfeitable right to pension benefits upon attainment of normal retirement age. *See* Ex. B.; U.S.C. §1053; *Winer* v. *Edison Bros. Stores Pension Plan, supra.* While plaintiff had the right to elect such benefits in lieu of other retirement benefits, an election was not a pre-condition to his entitlement under the plan terms or under ERISA. Indeed, because he was a plan participant, 29 U.S.C. §1053 mandated that plaintiff had a non-forfeitable right to such benefits.

Plaintiff's construction of the phrase "entitled to receive" as requiring an unconditional right to receive benefits goes too far. When viewed in terms of the admitted policy of Section 5.4 to avoid duplicate benefits for the same period of continuous service, it is clear a less restrictive definition is necessary to implement that purpose. *Compare Hurtt* v. *United States,* 309 F.2d 404 (Ct.Cls. 1962) *with Kenny* v. *Hampton,* 475 F.2d 1323 (D.C. Cir. 1973).

Accordingly, the trustees' interpretation of applicability of Section 5.4 to the period of the initial employment agreement is neither arbitrary and capricious nor an abuse of discretion.

On the other hand, the Court finds that the trustees' action with regard to the period after the October, 1978, renegotiation of plaintiff's employment agreement to be

---

[2] It is undisputed that the Milwaukee Road plan meets the requirements of Section 401(a) of the Internal Revenue Code and that plaintiff was credited for the same period of service under both plans.

arbitrary and inconsistent with the plain language of the plan.

After October 1, 1978, plaintiff was not a participant in the Milwaukee Road plan. All retirement benefits paid to him after that date were from sources other than a pension plan qualified under Section 401(a) of the Internal Revenue Code and were not paid on account of prior railroad service. It is improper to base the offset of benefits on all post-retirement benefits received by plaintiff from the Milwaukee Road when such benefits, under the terms of the renegotiated agreement, were not within the proscriptions of Section 5.4.

Defendants' contention that plaintiff's construction of this provision, as modified by this memorandum, allows him to receive pension benefits from both BN and Milwaukee Road, based on service from February, 1940, through October, 1966, is meritless. It is clear that retirement benefits after October, 1978, were not based upon years of service in any manner related to Section 5.4.

III.

Therefore, defendants' motion for summary judgment is granted with respect to the period from March, 1970, to October, 1978. Plaintiff's motions for summary judgment is granted for the period from October, 1978. In all other respects, the parties' motions, including cross-motions for attorneys' fees, are denied.

APPENDIX C

AMENDED
JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 81-1035 September Term, 1981

William J. Quinn,

Appellee,

vs.

Burlington Northern, Inc. Pension Plan, et al.,

Appellants.

No. 81-1086

William J. Quinn,

Appellant,

vs.

Burlington Northern, Inc. Pension Plan, et al.,

Appellees.

(Filed November 30, 1981)

Appeals from the United States District Court for the District of Minnesota.

These causes were heard on a designated record from the United States District Court for the District of Minnesota and on briefs of the respective parties and were argued by counsel.

After consideration, it is now ordered and adjudged that the judgment of the said District Court in these causes be, and the same are hereby, affirmed in part, reversed in part and remanded to the said District

Court for proceedings consistent with the opinion of this Court.

November 30, 1981

Costs taxed in favor of Burlington Northern Inc., et al in accordance with the Court's directions:

Clerk's docketing fee:	$ 65.00
Preparation of Court's record:	$ 249.00
Costs of producing briefs:	$ 119.20
Total taxable costs of Burlington Northern for recovery from William J. Quinn	$ 433.20

Robert D. St. Vrain
Clerk, U.S. Court of Appeals,
Eighth Circuit

APPENDIX D

STATUTES INVOLVED

Section 101(b) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001(b), provides:

> Congressional findings and declaration of policy. . . (b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

ERISA §203(a)(3), 29 U.S.C. §1053(a)(3), provides:

> Minimum vesting standards (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection . . .
>
> > (3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 1055 of this title).
> >
> > (B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent

to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1082(c)(8) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(E)(i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be

payable if the employer ceases contributions to the multiemployer plan.

(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(I) the plan is amended to reduce benefits under section 1425 or 1441 of this title, or

(II) benefit payments under the plan may be suspended under section 1426 or 1441 of this title.

ERISA §502(e)(1), 29 U.S.C. §1132(e)(1), provides:

Civil enforcement . . . (e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

ERISA §514(a), (b)(1), 29 U.S.C. §1144(a), (b)(1), provides:

Other laws (a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

Opposition

Supreme Court, U.S.
FILED
MAR 26 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1582

IN THE

Supreme Court of the United States

October Term, 1981

WILLIAM J. QUINN,

Petitioner,

vs.

BURLINGTON NORTHERN INC. PENSION PLAN, BURLINGTON NORTHERN INC. PENSION TRUST and THE FIRST TRUST COMPANY OF SAINT PAUL, a Minnesota banking corporation, as Trustee,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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No. 81-1582

IN THE

Supreme Court of the United States

October Term, 1981

WILLIAM J. QUINN,

Petitioner,

vs.

BURLINGTON NORTHERN INC. PENSION PLAN, BURLINGTON NORTHERN INC. PENSION TRUST and THE FIRST TRUST COMPANY OF SAINT PAUL, a Minnesota banking corporation, as Trustee,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Burlington Northern Inc. Pension Plan, Burlington Northern Inc. Pension Trust and The First Trust Company of Saint Paul, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Eighth Circuit's opinion in this case. That opinion is reported at 664 F.2d 675.

STATEMENT OF THE CASE

Petitioner William J. Quinn was employed by several railroad companies during the 26-year period from February 1940 through October 11, 1966, 12 years of which were with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter the "Milwaukee Road"). During the period from October 12, 1966, through February 28, 1970, Quinn was employed by the Chicago, Burlington & Quincy Railroad Company (hereinafter the "CB & Q"), a predecessor railroad of Burlington Northern Inc. (hereinafter the "Burlington"). From March 1, 1970, through March 15, 1970, Quinn was employed by the Burlington. From March 16, 1970, through October 1, 1978, Quinn was again employed by the Milwaukee Road.

Quinn, because of his employment with the Burlington and the years of credited service to which he was entitled, was a participant in the Burlington Northern Inc. Pension Plan and, as such, became entitled to receive pension benefits thereunder on May 5, 1976, the date upon which he attained the age of 65.

Quinn, because of his employment with the Milwaukee Road, was also a participant in the Milwaukee Road Pension Plan and, as such, became entitled, upon reaching age 65, to receive pension benefits thereunder in the approximate amount of $63,000 per year, based upon his years of railroad service from February 19, 1940 through May, 1976. As actuarially determined, that part of his pension benefits which Quinn had the right to receive under the Milwaukee Road Pension Plan for his years of service from February 19, 1940 through March 15, 1970 exceeded the pension benefits Quinn would have been entitled to receive under the Burlington Northern Inc. Pension Plan for the same years of service.

Quinn's 1970 employment agreement with the Milwaukee Road provided that he was entitled to receive, at his option, either those pension benefits to which he would be entitled under the Milwaukee Road Pension Plan, or such other payments as were specified in the employment agreement. Upon his retirement from the Milwaukee Road on October 1, 1978, Quinn elected to receive payments in the amount of $75,000 per year directly from the Milwaukee Road in lieu of the pension benefits to which he was entitled under the Milwaukee Road Pension Plan.

Section 5.4 of the Burlington Plan provides that the pension benefits payable to a participant shall be reduced by any vested benefit which such participant has received, or which he is entitled to receive, under any other qualified pension plan for years of service with an employer other than the Burlington or any of its predecessor railroads. Because Quinn had acquired a nonforfeitable and fully-vested right to receive pension benefits under the Milwaukee Road Pension Plan, the administrators of the Burlington Plan determined that he was entitled to pension benefits under the Burlington Plan based solely upon his service with the Burlington and its predecessor, the CB & Q. The administrators interpreted Section 5.4 of the Burlington Plan as precluding Quinn from receiving pension benefits under the Plan based upon his years of service from February 19, 1940 through October 11, 1966.

Quinn claims that Section 5.4 of the Burlington Plan is not applicable in his case because he chose to receive payments from the Milwaukee Road rather than his pension benefits from the Milwaukee Road Pension Plan. Quinn thus claims that his pension benefits from the Burlington Plan should be some $47,000 per year, based upon his railroad service from February 1940 through March 15, 1970, rather than the $5,300

per year he has been paid by the Burlington Plan based solely upon his service with the CB & Q and the Burlington from October 12, 1966 through March 15, 1970.

The District Court sustained the determination of the Plan administrators for the period ending September 30, 1978, but, for the period commencing subsequent thereto, held that Quinn was entitled to receive pension benefits from the Burlington Northern Inc. Pension Plan based upon the full period of his railroad service from February 1940 through March 15, 1970. The United States Court of Appeals for the Eighth Circuit affirmed the decision of the District Court as to the period ending September 30, 1978, and reversed the decision of the District Court as to the period subsequent thereto.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW IS NOT IN CONFLICT WITH THE DECISION OF ANY OTHER CIRCUIT AS TO THE PROPER SCOPE OF JUDICIAL REVIEW OF A PENSION PLAN ADMINISTRATOR'S INTERPRETATION OF PLAN PROVISIONS.

The Court below held that judicial review of the action of a pension plan administrator in interpreting its plan is limited to a determination of whether such action is arbitrary, capricious, or an abuse of discretion. This decision is not contrary to any decision of which respondents are aware, but rather, in absolute accord with the decisions of each of the other Circuits. *Norton v. I.A.M. National Pension Fund*, 553 F.2d 1352 (D.C. Cir. 1977); *Locals 2222, 2320-2327, International Brotherhood of Electrical Workers, AFL-CIO v. New England Telephone and Telegraph Company*, 489 F. Supp. 259 (D.

Mass. 1980); *Riley v. MEBA Pension Trust*, 570 F.2d 406 (2nd Cir. 1977); *Rosen v. Hotel and Restaurant Employees, Etc.*, 637 F.2d 592 (3rd Cir. 1981), cert. denied, 102 S.Ct. 398 (1981); *Horn v. Mullins*, 650 F.2d 35 (4th Cir. 1981); *Paris v. Profit Sharing Plan, Etc.*, 637 F.2d 357 (5th Cir. 1981), cert. denied, 102 S.Ct. 140 (1981); *Hodgins v. Central States, Southeast, Etc.*, 624 F.2d 760 (6th Cir. 1980); *Wardle v. Central States, Southeast, Etc.*, 627 F.2d 820 (7th Cir. 1980), cert. denied, 101 S.Ct. 922 (1981); *Gordon v. ILWU-PMA Ben. Funds*, 616 F.2d 433 (9th Cir. 1980); *Carter v. Central States, Southeast, Etc.*, 656 F.2d 575 (10th Cir. 1981).

II. THE ALLEGEDLY CONFLICTING DECISIONS AS TO THE MEANING OF THE TERM "ENTITLED TO RECEIVE" ARE DISTINGUISHABLE.

The Court below held that Quinn was, at all times subsequent to May 5, 1976 (the date he attained age 65), "entitled to receive" pension benefits under the Milwaukee Road Pension Plan. The Court's reasoning was based upon Section 1.26 of the Milwaukee Road Pension Plan which provides that " 'Normal Retirement Age' means the date on which the participant attains age 65 at which time all benefits accrued under the Plan shall become nonforfeitable," and 29 U.S.C., §1002 (19), which provides that:

> The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan.

Quinn contends that this holding is in conflict with *Kenny v. Hampton*, 475 F.2d 1323 (D.C. Cir. 1973); *Wheeler v. Board of Administration of the Public Employee's Retirement System*, 25 Cal.3d 600, 159 Cal. Rptr. 336, 601 P.2d 568 (1979); and *Olson v. Republic Metals & Roofing Materials, Inc.*, 347 Ill. App. 422, 107 N.E.2d 57 (1952).

These decisions, however, are distinguishable. In *Kenny*, the claimant had not reached age 62, the date on which his right to benefits would become unconditional. In the instant case, Quinn had reached the age on which his right to receive benefits from the Milwaukee Plan became unconditional. Furthermore, in *Kenny*, the court interpreted the term "entitled to receive" in accordance with the legislative history which reflected a Congressional intent that the increase in benefits should be confined to those retirees who had already reached age 62, so as not to constitute an inducement for additional early retirements.

In *Wheeler*, the claimant elected to receive a disability retirement benefit reduced by the amount of social security benefits he was "entitled to receive." Under Federal law, the claimant's maximum social security benefits, $288 per month, were reduced pursuant to statute from $288 to $106 per month, because claimant was also receiving a worker's compensation award. The Court rejected the State's contention that the claimant was "entitled to receive" his maximum social security benefits of $288 and held that he was "entitled to receive" social security benefits of only $106 per month. It therefore reduced his monthly disability retirement benefit by $106, rather than $288. In the instant case, Quinn's pension benefits under the Milwaukee Road Pension Plan amount to some $63,000 per year. No set-off to that amount is provided for in either the Milwaukee Road Pension Plan or in any statute,

as was the case in *Wheeler*. Accordingly, Quinn is "entitled to receive" the full amount of his pension benefits under the Milwaukee Road Pension Plan.

In *Olsen*, the employer's agreement to pay retirement benefits to certain of its employees was specifically conditioned upon retirement, a condition precedent which was never satisfied. In the instant case, Quinn's right to benefits under the Milwaukee Road Pension Plan became unconditional on May 5, 1976.

III. THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUE.

Quinn was employed by the Milwaukee Road from March 16, 1970 through October 1, 1978. Section 2.1 of the Milwaukee Road Pension Plan, effective January 1, 1976, provides that "[a]ll of the Company's Employees on the Effective Date shall become Participants in the Plan on the Effective Date." Under this Plan, Quinn was entitled to benefits based upon his years of railroad service from February 19, 1940 through retirement from the Milwaukee. Quinn reached his normal retirement age on May 5, 1976, while still such an employee. At this latter date Quinn accrued nonforfeitable and unconditional rights to receive pension benefits under the Milwaukee Road Pension Plan. 29 U.S.C., §§1053(a), Appendix, infra, and 1002(19), supra. These rights are not subject to divestiture by any agreement which an employee might enter into with his employer, but rather are forever secured by the provisions of ERISA. 29 U.S.C., §1056(d)(1), Appendix, infra. It is precisely because Quinn has been at all times subsequent to May 5, 1976 legally entitled to receive pension benefits from the Milwaukee Road Pension Plan that the application of Section 5.4 of the Burlington Plan is required in determining his pension benefits thereunder.

The action of the Burlington Plan Committee in limiting the amount of pension benefits payable to Quinn to the amount based solely upon his years of service from October 12, 1966, through March 15, 1970, cannot be considered arbitrary, capricious or an abuse of discretion under the circumstances. The purpose of Section 5.4 of the Burlington Plan is to preclude an employee from receiving pension benefits from two qualified pension plans based upon the same years of service. The Burlington Plan Committee has denied Quinn pension benefits from the Burlington Plan for the period February 1940 through October 11, 1966. Under the provisions of the Milwaukee Road Pension Plan, Quinn was entitled to receive pension benefits based in part upon the period February 1940 through October 11, 1966.

The fact that Quinn has opted to receive third-party payments in lieu of pension benefits from the Milwaukee Road Pension Plan cannot alter his legally protected rights vis-a-vis the Milwaukee Road Pension Plan. Considering the fact that the Burlington Plan Committee is under a statutorily prescribed fiduciary duty to act with respect to its Plan in the interest of all the participants and beneficiaries, 29 U.S.C., §1104, Appendix, infra, their action in denying Quinn duplicate benefits in accordance with Section 5.4 of the Burlington Plan cannot be considered arbitrary, capricious or an abuse of discretion.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

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Appendix

APPENDIX

29 U.S.C., §1053(a) provides, in part:

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age . . . .

29 U.S.C., §1056(d)(1) provides:

Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

29 U.S.C., §1104, provides, in part:

(a)(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the Participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter.

* * * * *